

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 10-51280

In re:

Stephen John Wiczek and
Donna Lorraine Wiczek,

Debtors.

Terri A. Running, Trustee,

Plaintiff,

Adv. No.: 11-5009

vs.

**NOTICE OF HEARING AND
MOTION FOR SUMMARY JUDGMENT**

Nisswa Marine, Inc.,

Defendant.

To: Entities specified in Local Rule 9013-3.

1. Plaintiff Terri A. Running, Trustee ("**Trustee**"), by and through her undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 1:30 p.m. on August 3, 2011, before the Honorable Gregory F. Kishel, Chief Judge, in Courtroom 2A, 316 Robert Street North, St. Paul, Minnesota 55101, or as soon thereafter as counsel can be heard.

3. Any response to this Motion must be filed and served by delivery no later than July 29, which is five (5) days before the time set for the hearing (including Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. The petition

commencing this Chapter 7 case was filed on September 14, 2010. The case is now pending before this Court.

5. This motion arises under Bankruptcy Rule 7056. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-2 through 9013-4. Movant requests an Order for summary judgment in favor of Trustee and against Defendant Nisswa Marine, Inc. ("**Defendant**").¹

6. Defendant is a corporation wholly-owned by the Debtors Stephen and Donna Wiczek ("**Debtors**") which operates as a marina and boat dealership Nisswa, Minnesota.

7. Defendant emerged from its own Chapter 11 reorganization (Bankr. 09-50799) on August 19, 2010 by way of confirmation of its plan of reorganization.

8. In its monthly report for the period ending August 19, 2010 and submitted to the Office of the United States Trustee, Defendant reported assets in excess of \$1.5 million dollars and cash in excess of \$150,000.00. That report is attached hereto as Exhibit A.

9. During the 90 days prior to the commencement of this bankruptcy case, Debtors transferred \$41,467.69 (the "**Transfers**") to Defendant as follows:

- a. \$22,000.00 wire on September 14, 2010 (date of filing) from account of "Stephen J. Wiczek d/b/a Falls Flag Source". See Exhibit B attached hereto.
- b. \$9,467.69 wire on September 14, 2010 from account of "Donna Wiczek POD Account." See Exhibit C attached hereto.

10. The Debtors were insolvent at the time of the Transfers (the day they commenced their own bankruptcy case) and this is admitted by Debtors in their Answer at par. 12.

¹ Summary judgment is sought on one count of the Complaint.

11. On or about September 13, 2010, Defendant had \$114,896.49 on deposit at Wells Fargo. On September 28, 2010, Defendant had \$212,260.38 on deposit at Wells Fargo. See, Exhibit D.

12. The Debtors did not receive reasonably equivalent value for the Transfers. This is evidenced by the following:

- a. Debtors scheduled their interest in Nisswa Marine, Inc. to be valued at \$0.00 on the same day as the Transfers. The amended schedules did not change that valuation. The amended schedules are attached hereto as Exhibit E.
- b. Nisswa Marine, Inc. has just emerged from Chapter 11 bankruptcy and remained insolvent.

13. Debtors made the Transfers to hinder, delay or defraud their creditors and the Trustee.

14. Debtors made the Transfers at a time when they believed, or should have believed, that they could not pay their debts as they became due. This is evidenced by the following:

- a. Debtors filed bankruptcy on the same date as the Transfers.
- b. Debtors home was in foreclosure and their business, the Defendant, was just emerging from its own bankruptcy.
- c. Debtors' schedules, although incomplete and inaccurate, evidence substantial unpaid debts.

15. The Debtor's Summary of Schedules is attached hereto as Exhibit F.

16. The Trustee gives notice that she may testify at the hearing of this matter.

WHEREFORE, the Trustee requests that the Court grant summary judgment in her favor:

1. Awarding the Trustee a judgment against Nisswa Marine, Inc. in the amount of \$41,467.69;
2. For such other and further relief as is just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

/e/ Matthew R. Burton

Dated: June 17, 2011

By _____
Matthew R. Burton, #210018
Attorneys for Terri A. Running, Trustee
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402-1234
(612) 332-1030

VERIFICATION

I, Terri A. Running, Trustee for the Bankruptcy Estate of Stephen John Wiczek and Donna Lorraine Wiczek named in the foregoing Notice of Hearing and Motion for Summary Judgment, declare under penalty of perjury that the foregoing is true to the best of my knowledge, information and belief.

Executed on June 17, 2011

/e/ Terri A. Running

Terri A. Running, Trustee

439372

DEBTOR: Nisswa Marine Inc.

MONTHLY OPERATING REPORT
CHAPTER 11

CASE NUMBER: 09-50799

Form 2-A
COVER SHEET

For Period Ending August 19, 2010

Accounting Method: ☒ Accrual Basis ☐ Cash Basis

THIS REPORT IS DUE 15 DAYS AFTER THE END OF THE MONTH

Mark One Box for Each
Required Document:

Debtor must attach each of the following reports/documents unless the U. S. Trustee
has waived the requirement in writing. File the original with the Clerk of Court.
Submit a duplicate, with original signature, to the U. S. Trustee.

Report/Document Attached	Previously Waived	REQUIRED REPORTS/DOCUMENTS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	1. Cash Receipts and Disbursements Statement (Form 2-B)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	2. Balance Sheet (Form 2-C)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	3. Profit and Loss Statement (Form 2-D)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	4. Supporting Schedules (Form 2-E)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	5. Quarterly Fee Summary (Form 2-F)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	6. Narrative (Form 2-G)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	7. Bank Statements for All Bank Accounts
<input checked="" type="checkbox"/>	<input type="checkbox"/>	8. Bank Statement Reconciliations for all Bank Accounts

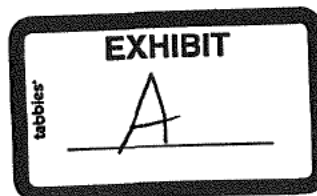
**I declare under penalty of perjury that the following Monthly Operating Report, and any
attachments thereto are true, accurate and correct to the best of my knowledge and belief.**

Executed on: 9-4-10

Print Name: Heather Wiczek

Signature: [Signature]

Title: Controller



Rev. 01/01/08

9.23-10

DEBTOR: Nisswa Marine Inc.

CASE NO:

09-50799

Form 2-B
CASH RECEIPTS AND DISBURSEMENTS STATEMENT

For Period: August 1 to August 19, 2010*See Attached.***CASH FLOW SUMMARY**

	<u>Current Month</u>	<u>Accumulated</u>
1. Beginning Cash Balance	\$ _____	_____ (1)
2. Cash Receipts		
Operations	_____	_____
Sale of Assets	_____	_____
Loans/advances	_____	_____
Other	_____	_____
Total Cash Receipts	\$ _____	_____
3. Cash Disbursements		
Operations	_____	_____
Debt Service/Secured loan payment	_____	_____
Professional fees/U.S. Trustee fees	_____	_____
Other	_____	_____
Total Cash Disbursements	\$ _____	_____
4. Net Cash Flow (Total Cash Receipts less Total Cash Disbursements)	_____	_____
5 Ending Cash Balance (to Form 2-C)	\$ _____	_____ (2)

CASH BALANCE SUMMARY

	<u>Financial Institution</u>	<u>Book Balance</u>
Petty Cash	_____	\$ _____
DIP Operating Account	_____	_____
DIP State Tax Account	_____	_____
DIP Payroll Account	_____	_____
Other Operating Account	_____	_____
Other Interest-bearing Account	_____	_____
TOTAL (must agree with Ending Cash Balance above)		\$ _____

- (1) *Accumulated beginning cash balance is the cash available at the commencement of the case.
Current month beginning cash balance should equal the previous month's ending balance.*
- (2) *All cash balances should be the same.*

Nisswa Marine, Inc.
Cash Account Register
 For the Period From Aug 1, 2010 to Aug 19, 2010
 10300 - Wells Fargo Bank- GENERAL

Filter Criteria includes: Report order is by Transaction Date.

Date	Reference	Type	Payee/Paid By	Memo	Payment Amt	Receipt Amt	Balance
			Opening Balance			201,535.59	201,535.59
8/2/10	3159	Payment	HANNAY'S	02869-01	135.89		201,399.70
8/2/10	3160	Payment	BODYWORKS	695	898.00		200,501.70
8/2/10	3161	Payment	VOL	NEW49682/OL	584.31		199,917.39
8/2/10	3162	Payment	LANDNSEA	927741	36.07		199,881.32
8/2/10	3163	Payment	YAM	246710	148.17		199,733.15
8/2/10	3164	Payment	MERCURY	84585	10.98		199,722.17
8/2/10	3165	Payment	GLBS		300.00		199,422.17
8/2/10	BRP58994784	Payment	BRP	22-0390	3,360.95		196,061.22
8/2/10	TRANSFER	Payment	WELLSFARGO		2.50		196,058.72
8/3/10	DEP080310	Gen. Jnl.				13,802.77	209,861.49
8/3/10	3166	Payment	YAM	246710	161.19		209,700.30
8/3/10	3167	Payment	LANDNSEA	927741	104.65		209,595.65
8/3/10	3168	Payment	HANNAY'S	02869-01	169.79		209,425.86
8/3/10	BRP59018810	Payment	BRP	22-0390	70.20		209,355.66
8/3/10	EBPR1015131	Payment	HOND	311427	1,469.33		207,886.33
8/3/10	JULY SALES	Payment	WELLSFARGO		33,792.00		174,094.33
8/3/10	SO 122109-00	Payment	PREMIER	2420	150.00		173,944.33
8/3/10	TRANSFER	Payment	WELLSFARGO		9,248.48		164,695.85
8/4/10	3169	Payment	HANNAY'S	02869-01	91.96		164,603.89
8/4/10	3170	Payment	MERCURY	84585	79.57		164,524.32
8/4/10	3171	Payment	RAN		220.00		164,304.32
8/4/10	3172	Payment	STATEOF		309.50		163,994.82
8/4/10	3173	Payment	STATEOF		516.50		163,478.32
8/4/10	3174	Payment	BRAINERDREC	1850	82.72		163,395.60
8/4/10	3175	Payment			117.56		163,278.04
8/4/10	3177	Payment	VOL	NEW49682/OL	1,717.06		161,560.98
8/4/10	3178	Payment					161,560.98
8/4/10	35642	Payment	CDS	89711	60.00		161,500.98
8/4/10	EBPR1015031	Payment	HOND	311427	146.04		161,354.94
8/4/10	CONSIGN	Receipt		8/4/10		2,038.00	163,392.94
8/4/10	CONSIGN	Receipt		8/4/10		1,797.50	165,190.44
8/4/10	MARINE MST	Receipt		8/4/10		55.00	165,245.44
8/4/10	RANGER	Receipt		8/4/10		231.33	165,476.77
8/4/10	RANGER	Receipt		8/4/10		247.50	165,724.27
8/5/10	3179	Payment	NNB		25,500.00		140,224.27
8/5/10	3181	Payment	NORTHERNWH	9632292	68.02		140,156.25
8/5/10	3182	Payment	LMI		635.91		139,520.34
8/5/10	3183	Payment	NISSWASANITATION	33777	288.25		139,232.09
8/5/10	3184	Payment	CARLSONHDWE		30.71		139,201.38
8/5/10	3185	Payment	INT		364.70		138,836.68
8/5/10	3186	Payment	HOLCO	46180052	228.33		138,608.35
8/5/10	3187	Payment	BLI		128.92		138,479.43
8/5/10	3188	Payment	HANNAY'S	02869-01	411.04		138,068.39
8/5/10	3189	Payment	NAPA	5583	135.64		137,932.75
8/5/10	3190	Payment	CITI		500.00		137,432.75
8/5/10	3191	Payment	GMAC	007-9003-54596	700.00		136,732.75
8/5/10	3192	Payment	CHASE	1051111313541	300.54		136,432.21
8/5/10	3193	Payment	BRAINERDREC	1850	249.04		136,183.17
8/5/10	APPLY	Payment	MERCURY	84585			136,183.17
8/5/10	SO 122587-00	Payment	PREMIER	2420	150.00		136,033.17
8/5/10	UPS080510	Payment	UPS	BWNCWNG	83.36		135,949.81
8/6/10	PR	Gen. Jnl.			20,935.65		115,014.16
8/6/10	3194	Payment	BRAINERDREC	1850	469.58		114,544.58
8/6/10	3195	Payment	BRP	22-0390	69.40		114,475.18
8/6/10	3196	Payment	MERCURY	84585	143.10		114,332.08
8/6/10	3197	Payment	MERCURY	84585	40.50		114,291.58
8/6/10	3198	Payment	MERCURY	84585	11.69		114,279.89
8/8/10	DEP080810	Gen. Jnl.				43,497.71	157,777.60
8/9/10	3199	Payment	YAM	246710	96.85		157,680.75
8/9/10	3200	Payment	MERCURY	84585	128.75		157,552.00
8/9/10	3201	Payment	RAN		94.50		157,457.50
8/9/10	3202	Payment	BRAINERDREC	1850	145.87		157,311.63
8/9/10	3203	Payment	COBALT	376500	251.31		157,060.32
8/9/10	3204	Payment	INDMAR	N018515	281.19		156,779.13
8/9/10	3205	Payment	NORTHERNWH	9632292	80.73		156,698.40
8/9/10	3206	Payment	GULLAKEMARINA	TCS43	382.81		156,315.59
8/9/10	3207	Payment	FINCRAFT		14.43		156,301.16

Nisswa Marine, Inc.
Cash Account Register
 For the Period From Aug 1, 2010 to Aug 19, 2010
 10300 - Wells Fargo Bank- GENERAL

Filter Criteria includes: Report order is by Transaction Date.

Date	Reference	Type	Payee/Paid By	Memo	Payment Amt	Receipt Amt	Balance
8/9/10	3208	Payment	SKIERS		1,435.40		154,865.76
8/9/10	3209	Payment	YAM	246710	1,275.96		153,589.80
8/9/10	3210	Payment	CDS	89711	50.25		153,539.55
8/9/10	3211	Payment	BCPROPELLER		183.00		153,356.55
8/9/10	3212	Payment	DHDOCK		58.65		153,297.90
8/9/10	3213	Payment	FINKEN		10.69		153,287.21
8/9/10	BRP59267194	Payment	BRP	22-0390	85.29		153,201.92
8/9/10	SO 122618-00	Payment	PREMIER	2420	54.93		153,146.99
8/10/10	DEP081010	Gen. Jnl.				5,048.22	158,195.21
8/10/10	3214	Payment	MERCURY	84585	440.91		157,754.30
8/10/10	3215	Payment	LANDNSEA	927741	14.21		157,740.09
8/10/10	3216	Payment	VOL	NEW49682/OL	117.36		157,622.73
8/10/10	BRP59307104	Payment	BRP	22-0390	11.01		157,611.72
8/10/10	SO 122645-00	Payment	PREMIER	2420	10.07		157,601.65
8/10/10	CONSIGN	Receipt		081010		2,469.00	160,070.65
8/10/10	LAND-SEA	Receipt		081010		106.52	160,177.17
8/10/10	MIDMN	Receipt		081010		5.10	160,182.27
8/10/10	RANGER	Receipt		081010		837.00	161,019.27
8/11/10	DEP081110	Gen. Jnl.				8,453.62	169,472.89
8/11/10	201008111037	Payment	HOND	311427	33.71		169,439.18
8/11/10	3217	Payment	BRAINERDREC	1850	1,847.20		167,591.98
8/11/10	3218	Payment	LARKINHOFFMAN		7,354.51		160,237.47
8/11/10	3219	Payment	REE		196.99		160,040.48
8/11/10	3220	Payment	NAPA	5583	357.70		159,682.78
8/11/10	3221	Payment	INTEGRA	60225488	697.34		158,985.44
8/11/10	3222	Payment	INT		621.53		158,363.91
8/11/10	3223	Payment	BCPROPELLER		131.25		158,232.66
8/11/10	3224	Payment	NORTHERNWH	9632292	100.68		158,131.98
8/11/10	3225	Payment	LARSON	16081	93.80		158,038.18
8/11/10	3226	Payment	MERCURY	84585	92.13		157,946.05
8/11/10	3227	Payment	HANNAY'S	02869-01	217.55		157,728.50
8/11/10	3228	Payment	NISSWAPROPERTIES		28,274.29		129,454.21
8/11/10	3229	Payment	RAN		12.95		129,441.26
8/11/10	3230	Payment	LANDNSEA	927741	63.84		129,377.42
8/11/10	3231	Payment	MERCURY	84585	11.69		129,365.73
8/11/10	3232	Payment	MERCURY	84585	43.15		129,322.58
8/11/10	3234	Payment					129,322.58
8/11/10	EBPR1014331	Payment	HOND	311427	16.56		129,306.02
8/11/10	SO122679-00	Payment	PREMIER	2420	160.14		129,145.88
8/12/10	DEP081210	Gen. Jnl.				8,964.34	138,110.22
8/12/10	3235	Payment	GALA		524.54		137,585.68
8/12/10	3236	Payment	BODYWORKS	695	448.00		137,137.68
8/12/10	3237	Payment	BLUELAGOON	NISSWAMARI	114.11		137,023.57
8/12/10	UPS1	Payment	UPS	BWNCWNG	76.89		136,946.68
8/13/10	3238	Payment	OASISOIL		1,896.36		135,050.32
8/13/10	3239	Payment	LANDNSEA	927741	359.83		134,690.49
8/13/10	3240	Payment	MERCURY	84585	320.36		134,370.13
8/13/10	BRP59485934	Payment	BRP	22-0390	45.88		134,324.25
8/13/10	SO122734-00	Payment	PREMIER	2420	168.90		134,155.35
8/13/10	TRANSFER	Payment	WELLSFARGO		344.00		133,811.35
8/15/10	DEP081510	Gen. Jnl.				16,252.13	150,063.48
8/16/10	3242	Payment					150,063.48
8/16/10	3243	Payment	PLEASCRAFT		28.63		150,034.85
8/17/10	3241	Payment					150,034.85
8/17/10	3244	Payment	MERCURY	84585	270.92		149,763.93
8/17/10	3245	Payment	LANDNSEA	927741	41.95		149,721.98
8/17/10	3246	Payment	LANDNSEA	927741	41.95		149,680.03
8/17/10	3247	Payment	ROCH		223.13		149,456.90
8/17/10	BRP59672448	Payment	BRP	22-0390	93.38		149,363.52
8/17/10	BRP59695638	Payment	BRP	22-0390	206.47		149,157.05
8/17/10	BRP59695650	Payment	BRP	22-0390	322.08		148,834.97
8/18/10	DEP081810	Gen. Jnl.				14,479.36	163,314.33
8/18/10	3249	Payment	RAN		176.95		163,137.38
8/18/10	3250	Payment	KARAVAN	NISMAR	2,328.00		160,809.38
8/18/10	3251	Payment	VOL	NEW49682/OL	8.28		160,801.10
8/19/10	DEP080410	Gen. Jnl.				5,526.02	166,327.12
8/19/10	DEP081910	Gen. Jnl.				6,000.30	172,327.42
8/19/10	3252	Payment	BRAINERDREC	1850	25.45		172,301.97

Nisswa Marine, Inc.
Cash Account Register
For the Period From Aug 1, 2010 to Aug 19, 2010
10300 - Wells Fargo Bank- GENERAL

Filter Criteria includes: Report order is by Transaction Date.

Date	Reference	Type	Payee/Paid By	Memo	Payment Amt	Receipt Amt	Balance
8/19/10	3253	Payment	MERCURY	84585	171.59		172,130.38
8/19/10	3254	Payment	SEALEGS		7,500.00		164,630.38
8/19/10	BRP59822482	Payment	BRP	22-0390	249.48		164,380.90
8/19/10	EBPR1013532	Payment	HOND	311427	26.59		164,354.31
8/19/10	UPS	Payment	UPS	BWNCWNG	63.23		164,291.08
		Total			167,055.93	129,811.42	

Nisswa Marine, Inc.
Cash Account Register
For the Period From Aug 1, 2010 to Aug 19, 2010
10320 - Wells Fargo Bank- TAX ACCT

Filter Criteria includes: Report order is by Transaction Date.

Date	Reference	Type	Payee/Paid By	Memo	Payment Amt	Receipt Amt	Balance
8/3/10	99100458432	Payment	SALESTAX	5617031	33,792.00		-33,792.00
8/3/10	JULY SALES	Payment	WELLSFARGO		-33,792.00		
8/3/10	TRANSFER	Payment	WELLSFARGO		-9,248.48		9,248.48
8/6/10	PR 1	Payment	MNWH		1,427.00		7,821.48
8/6/10	PR 2	Payment	FEDWH		7,821.48		
		Total					

Nisswa Marine, Inc.
Cash Account Register
For the Period From Aug 1, 2010 to Aug 19, 2010
10340 - Wells Fargo Bank- NNB HOLDING

Filter Criteria includes: Report order is by Transaction Date.

Date	Reference	Type	Payee/Paid By	Memo	Payment Amt	Receipt Amt	Balance
8/13/10	TRANSFER	Payment	Opening Balance WELLSFARGO		-344.00	19,329.62	19,329.62
		Total			-344.00		19,673.62

Nisswa Marine, Inc.
Balance Sheet
August 31, 2010

ASSETS

Current Assets		
Wells Fargo Bank- GENERAL	\$	132,767.17
Wells Fargo Bank- NNB HOLDING		19,673.62
Cash Register Fund		600.00
Accounts Receivable		70,512.16
Receivable from Officer		76,873.89
New Boats, Pkg Inventory		148,903.04
Used Boats Pkg Inventory		94,115.63
New Motors Inventory		31,520.12
Used Motors Inventory		3,722.50
New Trailers Inventory		97,636.24
Used Trailers Inventory		11,390.00
Dock & Lift Inventory		132,422.41
Snowmobiles Inventory		14,804.45
Misc. Units Inventory		78,089.25
Parts & Accessory Inventory		158,962.19
Gas Inventory		6,968.99
Canvas Inventory		11,784.04
HOLDING/CREDIT CARDS		(500.00)
Warranty Hold Account		15,491.58
		<hr/>
Total Current Assets		1,105,737.28
Property and Equipment		
Vehicles & Equipment		826,092.67
A/D-Vehicles & Equipment		(683,340.18)
Leasehold Improvements		510,553.30
A/D Leasehold Improvements		(161,107.68)
Accum. Amortization		(500.00)
		<hr/>
Total Property and Equipment		491,698.11
Other Assets		
Organizational Costs		500.00
		<hr/>
Total Other Assets		500.00
		<hr/>
Total Assets	\$	<u><u>1,597,935.39</u></u>

LIABILITIES AND CAPITAL

Current Liabilities		
Accounts Payable	\$	918,454.69
Customer Deposits		50,237.85
Gift Certificates		173.16
Federal W/H Taxes Payable		0.13
FUTA Payable		420.47
MN UC Fund Payable		2,661.28
Section 125 Payable		656.18
Use Tax		13.10
Sales Tax		1,996.31
Trailer Excise Tax		130.00
Cisco Systems Corp. Fin. Co.		8,351.75
CitiCapital		16,227.43
Honda Finance Floor Plan Note		7,458.00
Interstate Consign Batteries		(1,351.90)
JP Morgan Chase Bank N.A. 2005		298.24

Unaudited - For Management Purposes Only

Nisswa Marine, Inc.
Balance Sheet
August 31, 2010

GMAC-2006	7,664.90	
GMAC-2006 4DR	17,136.40	
US Bank - 2008 2500 Chevy	22,450.09	
Note Payable- NNB 2015058414	295,868.78	
Note Payable Shareholder	300,000.00	
Internal Hold Account	(363.31)	
Holding/Clearing Account	(2,917.93)	
	<hr/>	
Total Current Liabilities		1,645,565.62
Long-Term Liabilities		
Note Payable NNB (2015052041)	57,601.24	
Note Payable NNB (2015052042)	379,777.77	
	<hr/>	
Total Long-Term Liabilities		437,379.01
		<hr/>
Total Liabilities		2,082,944.63
Capital		
Capital Stock	20,000.00	
Treasury Stock	(580,000.00)	
Retained Earnings	296,777.60	
Net Income	(221,786.84)	
	<hr/>	
Total Capital		(485,009.24)
		<hr/>
Total Liabilities & Capital	\$	<u><u>1,597,935.39</u></u>

LAKEWOOD

B A N K
P.O. Box 500 - Nisswa, MN 56468
218-963-7325



ACCOUNT:
DOCUMENTS:

PAGE: 1
3209 09/30/2010
0

STEPHEN J WICZEK
DBA FALLS FLAG SOURCE
PO BOX 645
NISSWA MN 56468-0645

30
0
0

LAKEWOOD BANK OF NISSWA
PO BOX 500
NISSWA, MN 56468

TELEPHONE: 218-963-7325

Effective July 21, 2010, the FDIC's standard maximum deposit insurance coverage amount was permanently raised to \$250,000 for all interest bearing accounts. Non-interest bearing accounts are still fully covered under the Transaction Account Guarantee Program and will remain fully covered until at least December 31, 2010.

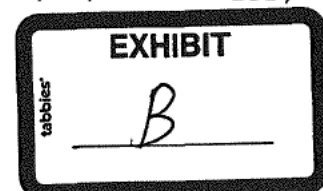
You are encouraged to contact any office of Lakewood Bank for assistance in determining your deposit insurance coverage.

More information is available at www.FDIC.gov or by calling the FDIC's toll free customer assistance number - 1-877-275-3342

BUSINESS FRIENDLY CHECKING ACCOUNT 3209

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			08/31/10	51,776.77
FNBO PYMT PROC 0011734491		7,312.01	09/01/10	59,088.78
CHECK # 11730	400.00		09/01/10	58,688.78
FNBO PYMT PROC 0011734491		7,035.79	09/02/10	65,724.57
FNBO PYMT PROC 0011734462	214.59		09/02/10	65,509.98
FNBO PYMT PROC 0011734491	1,128.98		09/02/10	64,381.00
FNBO PYMT PROC 0011734491		9,377.45	09/03/10	73,758.45
FNBO PYMT PROC 0011734491		9,311.25	09/07/10	83,069.70
FNBO PYMT PROC 0011734491		13,057.33	09/07/10	96,127.03
FNBO PYMT PROC 0011734491		27,250.09	09/07/10	123,377.12
CHECK # 11726	45.03		09/07/10	123,332.09
DEPOSIT		2,920.51	09/08/10	126,252.60
DEPOSIT		180.79	09/09/10	126,433.39
FNBO PYMT PROC 0011734462		298.76	09/09/10	126,732.15
FNBO PYMT PROC 0011734491		2,885.77	09/09/10	129,617.92
Transfer from Nisswa Signs		1,500.00	09/09/10	131,117.92

* * * C O N T I N U E D * * *





BANK
P.O. Box 500 - Nisswa, MN 56468
218-963-7325

ACCOUNT:
DOCUMENTS:

PAGE: 2
3209 09/30/2010
0



STEPHEN J WICZEK

BUSINESS FRIENDLY CHECKING ACCOUNT

3209

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
WIRE TRANSFER FEE	20.00		09/09/10	131,097.92
Wire Transfer to: harris bank	30,434.45		09/09/10	100,663.47
CHASE EPAY 982268697	3,152.73		09/09/10	97,510.74
CHECK # 11740	1,000.00		09/09/10	96,510.74
FNBO PYMT PROC 0011734491		3,082.11	09/10/10	99,592.85
WIRE TRANSFER FEE	20.00		09/10/10	99,572.85
Wire Transfer to: lake region bank uncommon inc				
	56,998.86		09/10/10	42,573.99
FNBO PYMT PROC 0011734462	220.28		09/10/10	42,353.71
CHECK # 11734	45.95		09/10/10	42,307.76
CHECK # 11739	240.32		09/10/10	42,067.44
CHECK # 11746	575.00		09/10/10	41,492.44
CHECK # 11747	575.00		09/10/10	40,917.44
CHECK # 11750	599.00		09/10/10	40,318.44
CHECK # 11742	1,000.00		09/10/10	39,318.44
CHECK # 11738	1,446.31		09/10/10	37,872.13
CHECK # 11744	3,802.50		09/10/10	34,069.63
FNBO PYMT PROC 0011734491		25.65	09/13/10	34,095.28
FNBO PYMT PROC 0011734491		74.81	09/13/10	34,170.09
FNBO PYMT PROC 0011734462		434.17	09/13/10	34,604.26
FNBO PYMT PROC 0011734462		2,770.64	09/13/10	37,374.90
CHASE EPAY 984504270	939.20		09/13/10	36,435.70
CHECK # 11743	447.50		09/13/10	35,988.20
CHECK # 11745	1,800.00		09/13/10	34,188.20
FNBO PYMT PROC 0011734491		50.23	09/14/10	34,238.43
WIRE TRANSFER FEE	20.00		09/14/10	34,218.43
WIRE TRANSFER FEE	20.00		09/14/10	34,198.43
Wire Transfer to: WELLS FARGO	32,000.00		09/14/10	2,198.43
CHECK # 11737	44.47		09/14/10	2,153.96
CHECK # 11736	81.84		09/14/10	2,072.12
CHECK # 11733	227.54		09/14/10	1,844.58
CHECK # 11751	592.50		09/14/10	1,252.08
WIRE FEE REFUND		40.00	09/15/10	1,292.08
MN DEPT REVENUE MN REV PAY 99100659113				
	59.00		09/15/10	1,233.08
IRS USATAXPYMT 270065800664256	532.30		09/15/10	700.78
CHECK # 11735	48.63		09/15/10	652.15
DEPOSIT		299.24	09/16/10	951.39
VERIZON WIRELESS PAYMENTS 068069289500001				
	100.07		09/16/10	851.32
FNBO PYMT PROC 0011734462		3,621.12	09/17/10	4,472.44
Online Transfer from BUSINESS FRIENDLY CH #10013696				
		600.00	09/17/10	5,072.44
CHECK # 11753	202.10		09/17/10	4,870.34
CHECK # 11754	595.00		09/17/10	4,275.34

* * * C O N T I N U E D * * *



BANK
P.O. Box 500 - Nisswa, MN 56468
218-963-7325

ACCOUNT:

PAGE: :
3355 09/15/2010



DONNA WICZEK
POD ACCOUNT
PO BOX 645
NISSWA MN 56468-0645

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* * * F I N A L S T A T E M E N T * * *

LAKEWOOD BANK OF NISSWA
PO BOX 500
NISSWA, MN 56468

TELEPHONE: 218-963-7325

Effective July 21, 2010, the FDIC's standard maximum deposit insurance coverage amount was permanently raised to \$250,000 for all interest bearing accounts. Non-interest bearing accounts are still fully covered under the Transaction Account Guarantee Program and will remain fully covered until at least December 31, 2010.

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Money Market Gold ACCOUNT 3355

DESCRIPTION	DEBITS	CREDITS	DATE	BALANCE
BALANCE LAST STATEMENT			08/31/10	13,487.69
Online Transfer to CHECKING #				
	2,000.00		09/07/10	11,487.69
Online Transfer to CHECKING #				
	2,000.00		09/08/10	9,487.69
WIRE TRANSFER FEE	20.00		09/14/10	9,467.69
Wire Transfer to: WELLS FARGO				
	9,467.69		09/14/10	.00
CLOSING WITHDRAWAL	.00		09/14/10	.00
BALANCE THIS STATEMENT			09/15/10	.00
TOTAL CREDITS	(0)	.00		
TOTAL DEBITS	(5)	13,487.69		

* * * C O N T I N U E D * * *

EXHIBIT

tabbles

C



LAKEWOOD

BANK
P.O. Box 500 - Nisswa, MN 56468
218-963-7325

ACCOUNT:

PAGE: 2
3355 09/15/2010



DONNA WICZEK

Money Market Gold ACCOUNT 3355

THE DISCLOSURE PERIOD FOR THIS ACCOUNT IS 09/01/10 THRU 09/14/10.

- - - - - I N T E R E S T - - - - -

INTEREST PAID 2010: 77.14

- - - ITEMIZATION OF OVERDRAFT AND RETURNED ITEM FEES - - -

*	TOTAL FOR	TOTAL	*
*	THIS PERIOD	YEAR TO DATE	*
*	-----	-----	*
* TOTAL OVERDRAFT FEES:	.00	.00	*
* TOTAL RETURNED ITEM FEES:	.00	.00	*
*****	*****	*****	*****

- END OF STATEMENT -

Expanded Business Services[®] Package

Account number: 5652 ■ September 1, 2010 - September 30, 2010 ■ Page 1 of 8

WELLS
FARGO

NISSWA MARINE
DEBTOR IN POSSESSION
CH.11, CASE# 09-50799 (MN)
24238 SMILEY RD
NISSWA MN 56468-2449

Questions?

Available by phone 24 hours a day, 7 days a week:

1-800-CALL-WELLS (1-800-225-5935)

TTY: 1-800-877-4833

En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (300)

Post Office Box B 514

Minneapolis MN 55479

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Account options

A check mark in the box indicates you have these convenient services with your account. Go to wellsfargo.com/biz or call the number above if you have questions or if you would like to add new services.

Business Online Banking ☒
Rewards for Business Check Card ☐
Online Statements ☒
Business Bill Pay ☐
Business Spending Report ☒
Overdraft Protection ☐

Activity summary

Beginning balance on 9/1	\$159,244.68
Deposits/Credits	293,187.84
Withdrawals/Debits	- 274,453.05
Ending balance on 9/30	\$177,979.47

Average ledger balance this period \$154,307.50

Account number: 5652

NISSWA MARINE
DEBTOR IN POSSESSION
CH.11, CASE# 09-50799 (MN)

Minnesota account terms and conditions apply

For Direct Deposit and Automatic Payments use

Routing Number (RTN): 091000019

For Wire Transfers use

Routing Number (RTN): 121000248

Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed at the top of your statement or visit your Wells Fargo branch.

EXHIBIT

tabbles

D

Transaction history

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
9/1		WF Direct Pay-Payment- Payroll-Tran ID Dp012645576		13,242.16 ✓	
9/1		Online Transfer Ref #lbebyd73Xn to Business Checking Payroll		8,160.90 ✓	
9/1		Online Transfer Ref #lbe5696Jzj to Business Checking xxxxxx9504 on 09/01/10		2.50 ✓	
9/1	3303	Check		1,612.01 ✓	
9/1	3267	Check		1,036.37 ✓	135,190.74
9/2		Deposit	15,619.76 ✓		
9/2		Deposit	7,664.90 ✓		
9/2		Deposit	3,838.88 ✓		
9/2	3304	Check		1,830.84 ✓	
9/2	3282	Check		519.95 ✓	
9/2	3293	Check		503.80 ✓	
9/2	35641	Check		460.68 ✓	
9/2	3290	Check		158.17 ✓	
9/2	3305	Check		105.85 ✓	
9/2	3306	Check		52.92 ✓	
9/2	35644	Check		40.17 ✓	158,641.90
9/3		1 Canadian Dep Items @ 5.00 Per Item		5.00	
9/3		Merchant Bankcd Deposit 100902 267382077886 Nisswa Marine Inc	3,377.00 ✓		
9/3		Merchant Bankcd Deposit 100903 267382077886 Nisswa Marine Inc	794.98 ✓		
9/3		Merchant Bankcd Interchng 100903 267382077886 Nisswa Marine Inc		1,653.45	
9/3	35645	Cashed Check		718.61 ✓	
9/3		Merchant Bankcd Discount 100903 267382077886 Nisswa Marine Inc		126.73	
9/3		Merchant Bankcd Fee 100903 267382077886 Nisswa Marine Inc		30.91	
9/3	3310	Check		1,164.00 ✓	
9/3	3313	Check		517.05 ✓	
9/3	3274	Check		510.60 ✓	
9/3	3292	Check		188.50 ✓	
9/3	3302	Check		180.00 ✓	
9/3	3297	Check		131.25 ✓	
9/3		U. P. S. UPS Bill 102400000553311 Nisswa Marine		72.85 ✓	157,514.93
9/7		Merchant Bankcd Deposit 100906 267382077886 Nisswa Marine Inc	15,806.76 ✓		
9/7		Merchant Bankcd Deposit 100904 267382077886 Nisswa Marine Inc	1,080.63 ✓		
9/7		Online Transfer Ref #lbe569Zh2P to Business Checking August Sales Tax		6,701.00 ✓	
9/7		Online Transfer Ref #lbermkgtrr to Business Checking Sept Accelerated Payment		4,490.00 ✓	
9/7	3291	Check		12,370.00 ✓	
9/7	3311	Check		6,505.00 ✓	
9/7	3335	Check		3,023.04 ✓	
9/7	3307	Check		2,500.00 ✓	
9/7	35646	Check		964.83 ✓	
9/7	3314	Check		582.19 ✓	
9/7	3300	Check		396.46 ✓	
9/7	3298	Check		250.00 ✓	
9/7	3308	Check		185.97 ✓	
9/7	3296	Check		153.23 ✓	
9/7	3336	Check		129.39 ✓	
9/7	3295	Check		63.89 ✓	
9/7	35647	Check		60.00 ✓	
9/7	3309	Check		26.01 ✓	136,001.31
9/8		Merchant Bankcd Deposit 100907 267382077886 Nisswa Marine Inc		1,960.36 ✓	
9/8	3346	Check		1,402.00 ✓	

Transaction history (continued)

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
9/8	3350	Check		935.00 ✓	
9/8	3341	Check		516.64 ✓	
9/8	3312	Check		321.35 ✓	
9/8	3348	Check		264.00 ✓	
9/8	3342	Check		253.15 ✓	
9/8		Brp US Inc Cia Pmt 100907 000000189880742 Nisswa Marine Inc		68.15 ✓	130,280.66
9/9		Deposit	5,750.38 ✓		
9/9		Deposit	2,959.83 ✓		
9/9		Deposit	2,164.38 ✓		
9/9		Return Item Charge - Paper MN 100909		866.00 ✓	
9/9		Return Item Fee MN 100909		12.00 ✓	
9/9		Direct Pay Nonwf Bus Pymt Trans		21.00 ✓	
9/9		Direct Pay Monthly Base		10.00 ✓	
9/9		Direct Pay Individual Pymt Trans		9.00 ✓	
9/9	3322	Check		14,185.95 ✓	
9/9	3325	Check		338.98 ✓	
9/9		Check		299.24 ✓	
9/9	3352	Check		143.90 ✓	
9/9		Amhonda Ebpp Ebpp ACH 100907 Ebpr10116321831 313854Nisswa Marine		94.06 ✓	
9/9	3324	Check		90.92 ✓	125,084.20
9/10		1 Canadian Dep Items @ 5.00 Per Item		5.00 ✓	
9/10		Merchant Bankcd Deposit 100909 267382077886 Nisswa Marine Inc	2,691.14 ✓		
9/10	3323	Check		5,530.00 ✓	
9/10	3316	Check		4,000.00 ✓	
9/10	3334	Check		719.15 ✓	
9/10	3332	Check		700.00 ✓	
9/10		Brp US Inc Cia Pmt 100909 000000190290769 Nisswa Marine Inc		390.17 ✓	
9/10	3301	Check		378.70 ✓	
9/10	3351	Check		249.67 ✓	
9/10	3330	Check		218.75 ✓	
9/10	3337	Check		142.70 ✓	
9/10		Brp US Inc Cia Pmt 100909 000000190290762 Nisswa Marine Inc		92.66 ✓	
9/10	3345	Check		91.38 ✓	
9/10		U. P. S. UPS Bill 102470000553311 Nisswa Marine		82.76 ✓	
9/10	3318	Check		53.87 ✓	
9/10	3357	Check		47.95 ✓	
9/10	3343	Check		40.16 ✓	115,032.42
9/13		Merchant Bankcd Deposit 100910 267382077886 Nisswa Marine Inc	6,393.07 ✓		
9/13		Merchant Bankcd Deposit 100911 267382077886 Nisswa Marine Inc	1,346.62 ✓		
9/13	3364	Check		5,000.00 ✓	
9/13	3361	Check		817.50 ✓	
9/13		Vehicle Serv ACH Item Dir35592 Nisswa Marine Inc		611.00 ✓	
9/13	3331	Check		500.00 ✓	
9/13	3353	Check		445.42 ✓	
9/13	3319	Check		253.72 ✓	
9/13	3327	Check		99.75 ✓	
9/13	3321	Check		83.95 ✓	
9/13	3317	Check		64.28 ✓	114,896.49
9/14		WT Fed#02047 Lakewood Bank, NAT /Org=Fall's Flag Srf# Trn#100914056847 Rfb#	32,000.00 ✓		
9/14		WT Fed#02007 Lakewood Bank, NAT /Org=Donna Wiczek Srf# Trn#100914056990 Rfb#	9,467.69 ✓		
9/14		Merchant Bankcd Deposit 100913 267382077886 Nisswa Marine Inc	6,108.80 ✓		
9/14		Wire Trans Svc Charge - Sequence: 100914056847 Srf# Trn#100914056847 Rfb#		10.00	
9/14		Wire Trans Svc Charge - Sequence: 100914056990 Srf# Trn#100914056990 Rfb#		10.00	

Transaction history (continued)

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
9/14	3180	Check		1,808.84 ✓	
9/14	3344	Check		407.62 ✓	
9/14	3320	Check		290.99 ✓	
9/14	3340	Check		98.22 ✓	
9/14		Brp US Inc Cia Pmt 100913 000000190756015 Nisswa Marine Inc		64.00 ✓	
9/14		Amhonda Ebpp Ebpp ACH 100910 Ebpr10113322743 313854Nisswa Marine		23.89 ✓	159,759.42
9/15		WF Direct Pay-Payment- Payroll-Tran ID Dp012862954		12,971.44 ✓	
9/15		Online Transfer Ref #lbebyg56Pd to Business Checking 051710 PR		5,736.04 ✓	
9/15	3338	Check		2,378.40 ✓	
9/15	3359	Check		362.46 ✓	
9/15	3333	Check		300.54 ✓	
9/15	3356	Check		88.08 ✓	
9/15		Brp US Inc Cia Pmt 100914 000000190960968 Nisswa Marine Inc		78.80 ✓	
9/15	3354	Check		73.50 ✓	
9/15	3355	Check		72.37 ✓	
9/15	3366	Check		45.00 ✓	
9/15		Prudential Ins Prem 100915 2L4347424010257 Nisswa Marine Inc		38.25 ✓	
9/15		Prudential Ins Prem 100915 2L4347427010257 Nisswa Marine Inc		30.15 ✓	137,584.39
9/16		Deposit	38,731.22 ✓		
9/16		Deposit	1,705.92 ✓		
9/16		Deposit	1,473.22 ✓		
9/16	3373	Check		13,266.61 ✓	
9/16	3365	Check		404.03 ✓	
9/16	3381	Check		297.78 ✓	
9/16	3358	Check		59.23 ✓	
9/16	3375	Check		50.25 ✓	165,416.85
9/17		Merchant Banked Deposit 100916 267382077886 Nisswa Marine Inc	6,359.65 ✓		
9/17	35647	Cashed Check		693.81 ✓	
9/17	90037	Check		1,753.89 ✓	
9/17	3374	Check		707.66 ✓	
9/17	3379	Check		400.00 ✓	
9/17	3328	Check		243.06 ✓	
9/17	3371	Check		214.14 ✓	
9/17	3349	Check		156.70 ✓	
9/17	3369	Check		131.25 ✓	
9/17	3347	Check		108.74 ✓	
9/17		Brp US Inc Cia Pmt 100916 000000191448314 Nisswa Marine Inc		73.35 ✓	
9/17		U. P. S. UPS Bill 102540000553311 Nisswa Marine		60.79 ✓	
9/17		Amhonda Wholesal PO/Remit SEP 16 3138543Ax201009 Ref*BT*3138543Ax20100916080623100916\		33.71 ✓	167,199.40
9/20		Merchant Banked Deposit 100917 267382077886 Nisswa Marine Inc	11,057.15 ✓		
9/20		Merchant Banked Deposit 100918 267382077886 Nisswa Marine Inc	3,357.00 ✓		
9/20	3362	Check		32,700.00 ✓	
9/20	3385	Check		8,659.00 ✓	
9/20	3384	Check		5,494.00 ✓	
9/20	35648	Check		911.48 ✓	
9/20	3372	Check		374.69 ✓	
9/20	3376	Check		330.25 ✓	
9/20	3360	Check		222.12 ✓	
9/20	3380	Check		161.64 ✓	
9/20	35649	Check		60.00 ✓	
9/20	3382	Check		16.95 ✓	132,683.42
9/21		Merchant Banked Deposit 100920 267382077886 Nisswa Marine Inc	25,008.31 ✓		157,691.73
9/22		Deposit	16,578.67 ✓		
9/22		Deposit	3,158.98 ✓		
9/22	3399	Check		1,654.40 ✓	

Transaction history (continued)

Date	Check Number	Description	Deposits/ Credits	Withdrawals/ Debits	Ending daily balance
9/22	3404	Check		1,160.94 ✓	
9/22	3412	Check		1,111.48 ✓	
9/22	3405	Check		1,071.00 ✓	
9/22	3367	Check		126.87 ✓	
9/22	3299	Check		82.00 ✓	172,222.69
9/23	3406	Check		485.78 ✓	
9/23	3403	Check		400.00 ✓	
9/23	3401	Check		392.95 ✓	
9/23	3388	Check		93.43 ✓	
9/23	3383	Check		62.75 ✓	
9/23	3397	Check		51.75 ✓	
9/23	3363	Check		10.00 ✓	
9/23	3413	Check		7.91 ✓	170,718.12
9/24		Merchant Banked Deposit 100923 267382077886 Nisswa Marine Inc	1,483.80 ✓		
9/24	3391	Check		2,216.07 ✓	
9/24	3396	Check		1,941.81 ✓	
9/24	3392	Check		597.77 ✓	
9/24	3414	Check		533.42 ✓	
9/24		Check		321.75 ✓	
9/24	3326	Check		227.80 ✓	
9/24	3407	Check		183.68 ✓	
9/24	3377	Check		166.10 ✓	
9/24	3398	Check		110.82 ✓	
9/24		Brp US Inc Chax Cia 100923 000000192476971 Nisswa Marine Inc		58.97 ✓	
9/24		Amhonda Ebpp Ebpp ACH 100922 Ebpr10101324295 313854Nisswa Marine		58.76 ✓	
9/24	3386	Check		57.78 ✓	
9/24	3411	Check		53.00 ✓	
9/24		U. P. S. UPS Bill 102610000553311 Nisswa Marine		36.45 ✓	165,637.74
9/27		Merchant Banked Deposit 100925 267382077886 Nisswa Marine Inc	19,595.75 ✓		
9/27		Merchant Banked Deposit 100924 267382077886 Nisswa Marine Inc	3,527.34 ✓		
9/27		Deposit	2,908.65 ✓		
9/27		Deposit	2,457.43 ✓		
9/27	3394	Check		1,633.04 ✓	
9/27	3393	Check		593.54 ✓	
9/27	3390	Check		288.05 ✓	
9/27		Brp US Inc Chax Cia 100924 000000192623862 Nisswa Marine Inc		128.50 ✓	
9/27	3387	Check		85.43 ✓	
9/27	3415	Check		8.95 ✓	191,389.40
9/28		Merchant Banked Deposit 100927 267382077886 Nisswa Marine Inc	24,098.84 ✓		
9/28		Deposit	12,497.50 ✓		
9/28		Return Item Charge - Paper MN 100928		272.42 ✓	
9/28		Return Item Fee MN 100928		12.00 ✓	
9/28	3423	Check		15,000.00 ✓	
9/28	3416	Check		376.06 ✓	
9/28	3389	Check		64.88 ✓	212,260.38
9/29		WF Direct Pay-Payment- Payroll-Tran ID Dp013048358		19,003.91 ✓	
9/29		Online Transfer Ref #lbeqkpr6Z to Business Checking Payroll Taxes		10,935.09 ✓	
9/29	3424	Check		4,060.00 ✓	
9/29	3410	Check		361.23 ✓	
9/29	3402	Check		100.00 ✓	
9/29	3418	Check		23.80 ✓	
9/29	3378	Check		10.69 ✓	177,765.66
9/30		Deposit	2,123.59 ✓		
9/30	3434	Check		1,562.95 ✓	
9/30	35654	Check		100.00 ✓	
9/30	3431	Check		83.76 ✓	

IN RE Wiczek, Stephen John & Wiczek, Donna LorraineCase No. 10-51280

Debtor(s)

(If known)

AMENDED SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	H U S B A N D, W I F E, J O I N T, O R C O M M U N I T Y	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.	X			
2. Checking, savings or other financial accounts, certificates of deposit or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Checking - Account # 534651 Lakewood Bank	J	343.00
		Checking - Lakewood Bank (Falls Flags)	J	1,252.08
		Checking - Lakewood Bank xxxx696	J	22.05
		Savings - Account #9063355 Lakewood Bank		0.00
		Savings - Acct # - Lakewood Bank for Abbie	W	350.00
		Savings Acct - Lakewood Bank for Tanner	W	325.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnishings, include audio, video, and computer equipment.		5 Lamps		125.00
		Bedroom Furniture - King size bed, dresser, two night stands		250.00
		Computers-2 Dells 2001		100.00
		Cookware		50.00
		Dining Room Furniture - table and six chairs		200.00
		Dishwaree/Utensils		50.00
		DVD Players-2		50.00
		Living Room Furniture		3,000.00
		Miscellaneous yard tools and accessories		100.00
		Nightstands		200.00
		Nominally valued movie DVD collection - 35 in number		35.00
		Nominally valued music CD collection - 25 in number		50.00
		Patio Furniture		300.00
		Printers		50.00
		Silverware		25.00
		Stereo Equipment-Sony 2007		500.00
		Table & Chairs		200.00
		Televisions-Sony 2007		2,500.00
		2-26"		
		1-40"		
		1-32"		
		Washer/Dryer		200.00

EXHIBIT

tabbles

E

IN RE Wiczek, Stephen John & Wiczek, Donna Lorraine

Case No. 10-51280

Debtor(s)

(If known)

AMENDED SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X			
6. Wearing apparel.		Usual and customary wearing apparel		200.00
7. Furs and jewelry.		3 Brighton Bracelets		150.00
		5 Brighton Necklaces		500.00
		Diamond Earrings		200.00
		Wedding Rings		500.00
8. Firearms and sports, photographic, and other hobby equipment.		2 Digital Camera's	J	50.00
		2 Guns - 7 mm Remington Rifle; 100 Winchester 12 gu Camcorder		500.00
				50.00
9. Interest in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X			
10. Annuities. Itemize and name each issue.	X			
11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c).)	X			
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X			
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		30% Share - Gull Lake Properties, LLC - worthless	H	0.00
		35% Share - Nisswa Properties, LLC - worthless	H	0.00
		35% Share - Nisswa Properties, LLC - worthless	W	0.00
		50% Share - Nisswa Marine, Inc. - Chapter 11 See Case #09-50799 - no equity	H	0.00
		50% Share - Nisswa Marine, Inc. - Chapter 11 See Case #09-50799 - no equity	W	0.00
		Sole Proprieto - Steven Wiczek and Donna Wiczek d/b/a Falls Flag Source	H	0.00
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts receivable.	X			
17. Alimony, maintenance, support, and property settlements in which the debtor is or may be entitled. Give particulars.	X			

IN RE Wiczek, Stephen John & Wiczek, Donna LorraineCase No. 10-51280

Debtor(s)

(If known)

AMENDED SCHEDULE B - PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A - Real Property.	X			
20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.		<u>Northern National Bank v. Stephen J. Wiczek, Donna L. Wiczek, et. al; Trial court 11-CV-09-2168; Appeal #10-1488</u>	J	unknown
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers, and other vehicles and accessories.	X			
26. Boats, motors, and accessories.	X			
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.		Falls Flag furnishings, fixtures, equipment	J	9,100.00
29. Machinery, fixtures, equipment, and supplies used in business.	X	Falls Flag Inventory - estimated	J	27,000.00
30. Inventory.				
31. Animals.	X			
32. Crops - growing or harvested. Give particulars.	X			
33. Farming equipment and implements.	X			
34. Farm supplies, chemicals, and feed.	X			
35. Other personal property of any kind not already listed. Itemize.		Lawn Mower-John Deere 17 hp		800.00
		Miscellaneous small hand tools		150.00
TOTAL				49,477.13

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0 continuation sheets attached

(Include amounts from any continuation sheets attached. Report total also on Summary of Schedules.)

IN RE Wiczek, Stephen John & Wiczek, Donna LorraineCase No. 10-51280

Debtor(s)

(If known)

AMENDED SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

☐ Check if debtor claims a homestead exemption that exceeds \$146,450. *

(Check one box)

☒ 11 U.S.C. § 522(b)(2)☐ 11 U.S.C. § 522(b)(3)

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
SCHEDULE A - REAL PROPERTY			
Homestead: Parcel Number: 90-446-0090 Easterly One-Half or Lot 8, including lake frontage on Gull Lake of 55' feet: and approximately 22.5 feet on the rear line of said Lot 8 bounded on the East by the west line of Lot 9, Schaeffer's Point and all of Lots 9 and 10, Schaffer's Point, Cass County, Minnesota.	11 USC § 522(d)(1)	1.00	1,880,000.00
SCHEDULE B - PERSONAL PROPERTY			
Checking - Account # 534651 Lakewood Bank	11 USC § 522(d)(5)	343.00	343.00
Checking - Lakewood Bank (Falls Flags)	11 USC § 522(d)(5)	750.00	1,252.08
Checking - Lakewood Bank xxxx696	11 USC § 522(d)(5)	22.05	22.05
Savings - Acct # - Lakewood Bank for Abbie	11 USC § 522(d)(5)	350.00	350.00
Savings Acct - Lakewood Bank for Tanner	11 USC § 522(d)(5)	325.00	325.00
5 Lamps	11 USC § 522(d)(3)	125.00	125.00
Bedroom Furniture - King size bed, dresser, two night stands	11 USC § 522(d)(3)	250.00	250.00
Computers-2 Dells 2001	11 USC § 522(d)(3)	100.00	100.00
Cookware	11 USC § 522(d)(3)	50.00	50.00
Dining Room Furniture - table and six chairs	11 USC § 522(d)(3)	200.00	200.00
Dishwaree/Utensils	11 USC § 522(d)(3)	50.00	50.00
DVD Players-2	11 USC § 522(d)(3)	50.00	50.00
Living Room Furniture	11 USC § 522(d)(3)	3,000.00	3,000.00
Miscellaneous yard tools and accessories	11 USC § 522(d)(3)	100.00	100.00
Nightstands	11 USC § 522(d)(3)	200.00	200.00
Nominally valued movie DVD collection - 35 in number	11 USC § 522(d)(5)	35.00	35.00
Nominally valued music CD collection - 25 in number	11 USC § 522(d)(5)	50.00	50.00
Patio Furniture	11 USC § 522(d)(3)	300.00	300.00
Printers	11 USC § 522(d)(3)	50.00	50.00
Silverware	11 USC § 522(d)(3)	25.00	25.00
Stereo Equipment-Sony 2007	11 USC § 522(d)(3)	500.00	500.00
Table & Chairs	11 USC § 522(d)(3)	200.00	200.00
Televisions-Sony 2007	11 USC § 522(d)(3)	2,500.00	2,500.00
2-26"			
1-40"			
1-32"			
Washer/Dryer	11 USC § 522(d)(3)	200.00	200.00
Usual and customary wearing apparel	11 USC § 522(d)(3)	200.00	200.00

* Amount subject to adjustment on 4/1/13 and every three years thereafter with respect to cases commenced on or after the date of adjustment.

IN RE Wiczek, Stephen John & Wiczek, Donna LorraineCase No. 10-51280

Debtor(s)

(If known)

AMENDED SCHEDULE C - PROPERTY CLAIMED AS EXEMPT
(Continuation Sheet)

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS
3 Brighton Bracelets	11 USC § 522(d)(4)	150.00	150.00
5 Brighton Necklaces	11 USC § 522(d)(4)	100.00	500.00
Diamond Earrings	11 USC § 522(d)(4)	200.00	200.00
Wedding Rings	11 USC § 522(d)(4)	500.00	500.00
2 Digital Camera's	11 USC § 522(d)(5)	50.00	50.00
2 Guns - 7 mm Remington Rifle; 100 Wincheters 12 gu	11 USC § 522(d)(5)	500.00	500.00
Camcorder	11 USC § 522(d)(3)	50.00	50.00
30% Share - Gull Lake Properties, LLC - worthless	11 USC § 522(d)(5)	100% of FMV	0.00
35% Share - Nisswa Properties, LLC - worthless	11 USC § 522(d)(5)	100% of FMV	0.00
35% Share - Nisswa Properties, LLC - worthless	11 USC § 522(d)(5)	100% of FMV	0.00
50% Share - Nisswa Marine, Inc. - Chapter 11 See Case #09-50799 - no equity	11 USC § 522(d)(5)	100% of FMV	0.00
50% Share - Nisswa Marine, Inc. - Chapter 11 See Case #09-50799 - no equity	11 USC § 522(d)(5)	100% of FMV	0.00
Sole Proprieto - Steven Wiczek and Donna Wiczek d/b/a Falls Flag Source	11 USC § 522(d)(5)	100% of FMV	0.00
Falls Flag furnishings, fixtures, equipment	11 USC § 522(d)(5)	1.00	9,100.00
Falls Flag Inventory - estimated	11 USC § 522(d)(5)	1.00	27,000.00
Lawn Mower-John Deere 17 hp	11 USC § 522(d)(5)	800.00	800.00
Miscellaneous small hand tools	11 USC § 522(d)(3)	150.00	150.00

United States Bankruptcy Court
District of Minnesota

IN RE:

Case No. 10-51280

Wiczek, Stephen John & Wiczek, Donna Lorraine

Chapter 7

Debtor(s)

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true copy of the following document(s):

Amended Schedule B, Amended Schedule C, Amended Schedule F, Amended Statement of Financial Affairs, and Signature Declaration

was(were) mailed to all persons in interest at the addresses set forth in the exhibit which is attached hereto, by first class mail, postage prepaid, on this 1 day of March, 2011.



Gregory R. Anderson 18651X
Anderson Larson Hanson & Saunders PLLP
331 SW 3d Street
Willmar, MN 56201-3322
(320) 235-4313 Fax: (320) 235-8180
ganderson@willmarlaw.com

Ally Financial
200 Renaissance Ctr
Detroit, MI 48243

Chase Auto
201 N Walnut St # De1-10
Wilmington, DE 19801

Frandsen Bank & Trust
24110 Smiley Rd
Nisswa, MN 56468-2390

GE Capital
General Electric Capital Corp/GE Direct
635 Maryville Centre Drive, Suite 120
St. Louis, MO, MN 63141

GE Commercial Finance
5595 Trillium Blvd
Hoffman Estates, IL 60192

Lakewood Bank
PO Box 500
Nisswa, MN 56468

Northern National Bank
24110 Smiley Rd
Nisswa, MN 56468-2390

Profinium Financial
PO Box 848
Fairmount, MN 56031

Small Business Administration
4105 Lexington Ave N
Suite 170
Arden Hills, MN 55126

Textron Financial Corporation
40 Westminster Street
Providence, RI 02903

Us Bank
425 Walnut St
Cincinnati, OH 45202

**United States Bankruptcy Court
District of Minnesota**

IN RE:

Case No. _____

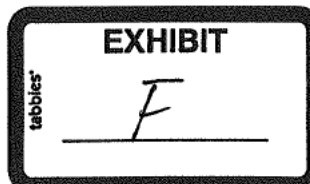
Wiczek, Stephen John & Wiczek, Donna LorraineChapter 7

Debtor(s)

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor's assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor's liabilities. Individual debtors also must complete the "Statistical Summary of Certain Liabilities and Related Data" if they file a case under chapter 7, 11, or 13.

NAME OF SCHEDULE	ATTACHED (YES/NO)	NUMBER OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property	Yes	1	\$ 1,880,000.00		
B - Personal Property	Yes	3	\$ 49,475.05		
C - Property Claimed as Exempt	Yes	2			
D - Creditors Holding Secured Claims	Yes	1		\$ 2,394,497.81	
E - Creditors Holding Unsecured Priority Claims (Total of Claims on Schedule E)	Yes	1		\$ 0.00	
F - Creditors Holding Unsecured Nonpriority Claims	Yes	2		\$ 3,126,687.56	
G - Executory Contracts and Unexpired Leases	Yes	1			
H - Codebtors	Yes	1			
I - Current Income of Individual Debtor(s)	Yes	1			\$ 9,967.85
J - Current Expenditures of Individual Debtor(s)	Yes	1			\$ 12,214.50
TOTAL		14	\$ 1,929,475.05	\$ 5,521,185.37	



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 10-51280

In re:

Stephen John Wiczek and
Donna Lorraine Wiczek,

Debtors.

Terri A. Running, Trustee,

Plaintiff,

Adv. No.: 11-5009

vs.

**MEMORANDUM IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT**

Nisswa Marine, Inc.,

Defendant.

Plaintiff Terri A. Running, Trustee ("**Trustee**") of the bankruptcy estate of Stephen and Donna Wiczek ("**Debtors**"), submits this Memorandum in Support of her Motion for Summary Judgment against Defendant Nisswa Marine, Inc. ("**Defendant**").

The defined terms in this Memorandum shall have the same meaning as those contained in the verified Notice of Hearing and Motion for Summary Judgment served and filed herewith. The facts relevant to this motion are contained in the verified Notice of Hearing and Motion.

Based on the scheduling conference and conversations between counsel, it appears that Defendant's defense to this action will be that the Debtors received reasonably equivalent value for the Transfers to Defendant. If that logic were to work, every potential debtor would incorporate a business and transfer their nonexempt assets to that entity to provide a layer of protection from their creditors and Chapter 7 trustees.

LEGAL ARGUMENT

I. STANDARDS FOR SUMMARY JUDGMENT.

Summary judgment allows the Court to "pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." Advisory Committee Notes to Rule 56; *Moratzka v. VISA U.S.A. (In re Calstar, Inc.)*, 159 B.R. 247, 250-52 (Bankr. D. Minn. 1993). Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c).

Initially, it is the burden of the movant to inform the Court of the basis for the motion, and identify those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). The movant must show there is an absence of evidence to substantiate the non-moving party's case. *Id.*, at 325. To that end, the Trustee has discharged his burden by asserting that the record does not contain a triable issue and by identifying that part of the record which supports his assertions. *See Id.*, at 323.

Once the movant has made its showing, the burden of production shifts to the non-moving party which must "go beyond the pleadings and by [its] ... own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' " and establish that there are specific and genuine issues of material fact warranting a trial. *Celotex*, 477 U.S. at 324 (*quoting* Fed. R. Civ. P. 56(c)). The non-moving party cannot cast some metaphysical doubt on the moving party's assertion. *Matsushita Elec. Indust. v. Zenith Radio Corp.*, 475 U.S. 574, 586

(1986). The non-moving party must present probative evidence supporting its case sufficient "to require a . . . judge to resolve the parties' differing versions of the truth at trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986) (quoting *First National Bank of Arizona v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). Any affidavits must "be made on personal knowledge, must set forth such facts as would be admissible in evidence, and shall affirmatively show that the affiant is competent to testify to the matters stated therein." Fed. R. Civ. P. 56(e). If, however, the evidence tendered is "merely colorable," or is "not significantly probative," the non-moving party has not carried its burden and the court must grant summary judgment to the moving party. *Anderson*, 477 U.S. at 249-50.

The Trustee believes summary judgment is appropriate in this case.

THE TRANSFERS ARE AVOIDABLE AS FRAUDULENT TRANSFERS

Section 548 of the Bankruptcy Code allows the Trustee to avoid a debtor's transfer of assets made within two years of the petition date where a debtor does not receive a reasonably equivalent value in exchange for the transfer.

The trustee may avoid any transfer (including any transfer to or for the benefit of an insider under an employment contract) of an interest of the debtor in property, or any obligation (including any obligation to or for the benefit of an insider under an employment contract) incurred by the debtor, that was made or incurred on or within 2 years before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

* * *

- (B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and
- (ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

11 U.S.C. §548(a)(1)(B); *In re Bargfrede*, 117 F.3d 1078, 1079 (8th Cir.1997); *In re Minnesota Utility Contracting, Inc.*, 110 B.R. 414, 417 (D. Minn.1990). "[T]he trustee need not prove any

particular state of mind on the part of either debtor or defendant in connection with such transfers; if the value of the property rights exchanged is so out of parity that the Debtor received an “unreasonably” small consideration, the transfer is avoidable.” *In re Northgate Computer Systems, Inc.*, 240 B. R. 248, 365 (Bankr. D. Minn. 1999).

To succeed on a claim under section 548(a)(1)(B), here the Trustee must show by a preponderance of the evidence: (1) a transfer of the Debtors’ property; (2) the transfer occurred within two years of September 14, 2010, the commencement of the bankruptcy proceeding; (3) the Debtors received less than equivalent value in exchange for the transfer; and (4) Debtors were insolvent on the date of the transfer or was rendered insolvent by the transfer. *See In re Investment Bankers, Inc.*, 136 B.R. 1008, 1021 (D. Colo. 1989), *aff’d*, 4 F. 3d 1556 (10th Cir. 1993), *cert. denied sub nom., Davis, Gillenwater & Lynch v. Turner*, 510 U.S. 1114, 114 S. Ct. 1061 (1994); *Glinka v. Bank of Vermont (In re Kelton Motors, Inc.)*, 130 B.R. 170, 174 (Bankr. D. Vt. 1991) (trustee must prove each element of a constructive fraudulent conveyance by a preponderance of the evidence).

1. Transfer of the Debtor’s property: This seems to be undisputed. See, Complaint and Answer at par. 5 of each.

2. Transfer Within Two Years of September 14, 2010, the Petition Date: This is undisputed. See, Complaint and Answer at par. 5 of each.

3. The Debtor Received Less Than Reasonably Equivalent Value: “[R]easonably equivalent value” has been interpreted to mean whether the debtor “received a fair exchange in the market place for the goods transferred.” *Ozark Restaurant Equipment Co.*, 850 F. 2d 342, 344-45 (8th Cir. 1988). The court must analyze “whether: (1) value was given; (2) it was given in exchange for the transfers; and (3) what was transferred was reasonably equivalent to what

was received." *In re Richards & Conover Steel, Co.*, 267 B.R. 602, 612 (8th Cir. BAP 2001). The consideration given in exchange for the debtor's property must confer an economic benefit upon the debtor, see *Butler Aviation Internat'l, Inc. v. Whyte*, 6 F. 3d 1119, 1125-26 (5th Cir. 1993), as viewed by the debtor's creditors. See *In re First Capital Holdings Corp.*, 179 B.R. 902, 907 (Bankr. C.D. Cal. 1995), citing *Maddox v. Robertson (In re Prejean)*, 994 F. 2d 706, 708 (9th Cir. 1993) (reasonably equivalent value determined from viewpoint of debtor's creditors).

The transfers to Nisswa Marine, Inc. occurred almost contemporaneously with the Debtors' own bankruptcy filing. The Debtors, in effect, converted \$41,000.00 in nonexempt funds by parking them in an insolvent corporation with a scheduled value of \$0.00. In effect, the Debtors turned an asset valued at \$41,000.00 to an asset valued at \$0.00. If this ruse were to pass muster, this Court would see a sudden onset on debtors dumping nonexempt funds into their insolvent corporations to avoid paying those funds to a Trustee.

4. At the Time of the Transfers, Debtors Were Insolvent or Became Insolvent as a Result of the Transfers.

Again, the Transfers occurred virtually contemporaneously with the Debtors' bankruptcy filing. Insolvency, as to the Debtors, is defined by 11 U.S.C. §101(32)(A) and essentially focuses on debts being greater than the value of the Debtors' property. Here, the Debtors' Summary of Schedules, filed on September 14, 2010, lists assets of roughly \$1.9 million dollars and debts of over \$5.5 million dollars. The Debtors were insolvent.

CONCLUSION

Based upon the foregoing, there being no genuine issues of material fact, and all the elements of an avoidable claim having been shown, the Trustee respectfully requests that summary judgment be entered against Defendant.

WHEREFORE, the Trustee requests summary judgment in his favor:

1. Awarding the Trustee a judgment against Nisswa Marine, Inc. in the amount of \$41,467.69;
2. For such other and further relief as is just and equitable.

**LEONARD, O'BRIEN,
SPENCER, GALE & SAYRE, LTD.**

Dated: June 17, 2011

/e/ Matthew R. Burton
By _____
Matthew R. Burton, #210018
Attorneys for Plaintiff
100 South Fifth Street, Suite 2500
Minneapolis, Minnesota 55402-1234
(612) 332-1030

439382

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Chapter 7 Case
Bankr. No. 10-51280

Stephen John Wiczek and
Donna Lorraine Wiczek,

Debtors.

Terri A. Running, Trustee,

Adv. No.: 11-5009

Plaintiff,

vs.

Nisswa Marine, Inc.,

Defendant.

UNSWORN CERTIFICATE OF SERVICE

I hereby certify that on June 17, 2011, I caused the following documents:

Notice of Hearing and Motion for Summary Judgment, Memorandum of Law and Findings of Fact, Conclusions of Law and Order for Summary Judgment (proposed)

to be filed electronically with the Clerk of Court through ECF, and that the above documents will be delivered by automatic e-mail notification pursuant to ECF and this constitutes service or notice pursuant to Local Rule 9006-1(a).

/e/ Stephanie Wood

Dated: June 17, 2011

Stephanie Wood
100 South Fifth Street, Suite 2500
Minneapolis, MN 55402
(612) 332-1030

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

BKY No. 10-51280

In re:

Stephen John Wiczek and
Donna Lorraine Wiczek,

Debtors.

Terri A. Running, Trustee,

Adv. No.: 11-5009

Plaintiff,

vs.

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER FOR JUDGMENT**

Nisswa Marine, Inc.,

Defendant.

This case is before the Court on the motion of Terri A. Running, trustee for summary judgment.

Upon the motion and the files,

FINDINGS OF FACT

1. This court has jurisdiction over this motion under 28 U.S.C. §§157 and 1334 and Federal Rule of Bankruptcy Procedure 5005.

2. Defendant is a corporation wholly-owned by the Debtors Stephen and Donna Wiczek (“**Debtors**”) which operates as a marina and boat dealership Nisswa, Minnesota.

3. Defendant emerged from its own Chapter 11 reorganization (Bankr. 09-50799) on August 19, 2010 by way of confirmation of its plan of reorganization.

4. In its monthly report for the period ending August 19, 2010 and submitted to the Office of the United States Trustee, Defendant reported assets in excess of \$1.5 million dollars and

cash in excess of \$150,000.00.

5. During the 90 days prior to the commencement of this bankruptcy case, Debtors transferred \$41,467.69 (the “**Transfers**”) to Defendant as follows:

- a. \$22,000.00 wire on September 14, 2010 (date of filing) from account of "Stephen J. Wiczek d/b/a Falls Flag Source."
- b. \$9,467.69 wire on September 14, 2010 from account of "Donna Wiczek POD Account."

6. The Debtors were insolvent at the time of the Transfers (the day they commenced their own bankruptcy case) and this is admitted by Debtors in their Answer at par. 12.

7. On or about September 13, 2010, Defendant had \$114,896.49 on deposit at Wells Fargo. On September 28, 2010, Defendant had \$212,260.38 on deposit at Wells Fargo.

8. The Debtors did not receive reasonably equivalent value for the Transfers. This is evidenced by the following:

- a. Debtors scheduled their interest in Nisswa Marine, Inc. to be valued at \$0.00 on the same day as the Transfers. The amended schedules did not change that valuation.
- b. Nisswa Marine, Inc. has just emerged from Chapter 11 bankruptcy and remained insolvent.

9. Debtors made the Transfers to hinder, delay or defraud their creditors and the Trustee.

10. Debtors made the Transfers at a time when they believed, or should have believed, that they could not pay their debts as they became due. This is evidenced by the following:

- a. Debtors filed bankruptcy on the same date as the Transfers.

- b. Debtors home was in foreclosure and their business, the Defendant, was just emerging from its own bankruptcy.
- c. Debtors' schedules, although incomplete and inaccurate, evidence substantial unpaid debts.

CONCLUSIONS OF LAW

- 1. There does not exist any genuine issues of material facts and the trustee is entitled to summary judgment as a matter of law.
- 2. The Trustee is entitled to relief pursuant to avoid the Transfers pursuant to 11 U.S.C. §548 and is entitled to judgment pursuant to 11 U.S.C. §550.

ORDER FOR JUDGMENT

IT IS ORDERED that the clerk shall enter an order and judgment in favor of the Plaintiff and against the Defendant as follows:

- 1. The Trustee is awarded the sum of \$41,467.69.
- 2. The Trustee is awarded her costs and disbursements in this action.

Dated: _____

Gregory F. Kishel
Chief United States Bankruptcy Judge

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